

NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rule-making information that does not fit into any other category of notice; and other types of information required by statute to be published in the *Register*. Because of the variety of material that is contained in a Notice of Public Information, the Office of the Secretary of State has not established a specific format for these notices.

NOTICE OF PUBLIC INFORMATION

DEPARTMENT OF ENVIRONMENTAL QUALITY WATER POLLUTION CONTROL

AZPDES MULTI-SECTOR GENERAL PERMITS

[M10-358]

1. **Name of the agency:** Department of Environmental Quality
2. **Title and its heading:** 18, Environmental Quality
- Chapter and its heading:** 9, Department of Environmental Quality – Water Pollution Control
- Article and its heading:** 9, Arizona Pollutant Discharge Elimination System
- Section number:** R18-9-A907(B)

3. **A brief description of the proposed general permit:**

ADEQ has had authority for implementation, compliance and enforcement of EPA's Multi-Sector General Permit (MSGP) 2000 since accepting delegation of the NPDES permitting program from EPA on December 5, 2002. This permit authorized the discharge of stormwater associated with industrial activity. The MSGP 2000 expired on October 30, 2005 but was administratively continued for facilities that were covered under the permit at the time it expired. ADEQ first presented a completed draft of its version of the MSGP for stakeholder discussion in January 2005. This draft was later withdrawn in anticipation of EPA finalizing its renewed permit, referred to as MSGP 2008. EPA issued the MSGP 2008 on September 28, 2008. On April 20, 2009 ADEQ proposed a new, more comprehensive draft patterned after EPA's MSGP 2008 for stakeholder review and discussion. The Department conducted an extensive informal stakeholder review process, starting on June 25, 2009 and continuing on a roughly bi-weekly schedule through the summer, concluding on October 28, 2009. After each meeting, the proposed language discussed during the previous meeting was posted on ADEQ's MSGP web site. A listserve with over 1100 subscribers was used to inform stakeholders of progress on the permit and announce meetings and new postings of the drafts.

The Department thoroughly evaluated all oral and written comments received as a result of the informal stakeholder review process. In light of stakeholder input, ADEQ decided to create two general permits for coverage of discharges of stormwater associated with industrial activity: a mining and non-mining MSGP 2010. To this end, two draft permits, appendices, fact sheets and other supporting documentation were distributed for final stakeholder review on June 15, 2010. One final round of stakeholder meetings was held June 28, 2010 (non-mining MSGP) and June 29, 2010 (mining MSGP) to discuss changes and explain the rationale for two separate permits. Again, the Department accepted written comments for a two week period following these meetings.

Today, the Department is proposing to replace the MSGP 2000 with the two MSGP 2010 permits mentioned above. Together, these permits authorize stormwater discharges associated with industrial activity from a total of 29 industrial (25 non-mining and four mining (Sectors G, H, I, and J)) sectors to surface waters.

EPA identifies 11 categories of stormwater discharges associated with industrial activity (40 CFR 122.26(b)(14)). One of these categories, construction activity, already has a separate general permit. The mineral industry, defined as facilities classified with Standard Industrial Classification Codes 10-14, is another of the categories. Development of a separate permit for the mineral industry (e.g., mining) reflects this industry's unique operating conditions and methods. Specifically, mining facilities in Arizona disturb large areas of mineralized land, which typically results in exposing soils with naturally elevated levels of pollutants (e.g., metals, sediment) to stormwater. Unlike other industrial sites, the nature of mining requires that the site can not be stabilized until mining has ceased.

A key element of the industrial stormwater is the use of control measures to ensure stormwater leaving an industrial facility does not cause or contribute to an exceedance of surface water quality standards. A primary tool for evaluating the effectiveness of control measures in the MSGP permits is "benchmark monitoring," which involves sampling stormwater for industry-specific parameters (further discussion occurs later in this notice). The quality of stormwater runoff from mining sites may vary based on degree of natural mineralization, time since last storm event, and intensity of storm event. As a result, ADEQ does not believe that benchmark levels have been developed that directly measure the effectiveness of control measure selection and implementation at mining sites. To better understand the nature of pollutants coming from these types of facilities, the mining MSGP 2010 requires characterization monitoring, for a host of pollutants, over the term of the permit. From this data, ADEQ intends to revisit the benchmark concept before issuance of the next mining MSGP permit.

By virtue of their land-disturbing activities, mines are in a nearly continual phase of construction throughout the life of their operations, which make them eligible for construction coverage under the industrial stormwater permit. No

other industry sector or group of sectors can claim these distinctions. Owing to the fact that mining sites conduct this ongoing construction-type activity, applicable construction general permit language was merged with the mining MSGP 2010, thus reducing an administrative burden to comply with two stormwater permits simultaneously when one permit can more efficiently achieve compliance with the requirements of the stormwater program. The permit specifies that enlargement of an existing pit is not new construction. However, additional construction-type inspections and control measures are still required for new construction in undisturbed areas at mine sites, such as building a new tailings impoundment or excavating a new pit.

Both permits require industrial facilities to minimize the discharge of pollutants in stormwater to assure that Surface Water Quality Standards are maintained. To this end, mining and non-mining permittees must: implement stormwater control measures and develop site-specific stormwater pollution prevention plans (SWPPP) to comply with AZPDES requirements; inspect and evaluate the performance of existing control measures; perform “follow-up” or corrective actions to correct identified problems; and conduct monitoring at each outfall that discharges stormwater associated with industrial activity.

Each permit is divided into eight parts: general requirements that apply to all permittees (i.e., permit coverage (Part 1)); control measures, effluent limits and water quality standards (Part 2); corrective actions (Part 3); inspections (Part 4); SWPPP preparation and maintenance (Part 5); monitoring (Part 6); reporting and recordkeeping requirements (Part 7); and industry sector-specific conditions (Part 8). Appendices include definitions and acronyms applicable to the permit, standard conditions, a table of sector-specific SIC codes covered by the permit, and guidance for calculating hardness when monitoring for metals that have hardness-based surface water quality standards.

As with previous permits, to be eligible for coverage under either the mining MSGP 2010 or the non-mining MSGP 2010, the discharges from industrial facilities must meet the eligibility provisions. Among other things, Part 1 describes how to apply for coverage, limitations on coverage, types of non-stormwater discharges that are allowed under the permits, permit compliance, authorization and coverage termination.

Part 2 requires the operator to select, design, install and implement control measures to meet the numeric effluent limitations and water quality standards listed in Part 2.2. Control measures include actions or devices to prevent or reduce water pollution. The selection, design and implementation of these control measures must be in accordance with good engineering practices and manufacturer’s specifications. ADEQ believes that for many facilities, minimization of pollutants in stormwater discharges can be achieved without using highly engineered, complex treatment systems. If operators find their control measures are not reducing pollutant discharges adequately, the control measures must be modified as expeditiously as practicable to meet the effluent limitations in the permit.

Part 3 requires corrective actions to eliminate a problem or condition that has caused an exceedance of an effluent limitation or a water quality standard. The provisions in Part 3 specify the types of conditions at the site that trigger corrective action requirements, what must be done to eliminate such conditions or conduct further inquiries into their cause, and the deadlines for completing the corrective action.

Part 4 requires inspections and directs permittees to inspect and evaluate the performance of existing stormwater control measures. If the permittee discovers the facility’s control measures are not being properly operated and / or maintained, a review of the selection, design, installation, and implementation of the control measures is required to determine if modifications are necessary.

Part 5 specifies the preparation and documentation requirements of the SWPPP and its availability to the public. To be covered under the permit, the discharger must first prepare a SWPPP for the facility before submitting a Notice of Intent (NOI). The SWPPP documents information on how the permittee intends to comply with the effluent limitations and water quality standards (including inspection, maintenance, evaluation and monitoring requirements) contained elsewhere in the permit.

Part 6 describes monitoring requirements that apply to outfalls discharging stormwater associated with industrial activity. The non-mining MSGP 2010 requires benchmark monitoring, effluent limitation guidelines monitoring, impaired waters monitoring and, if required by ADEQ, additional monitoring. Benchmark monitoring is used by the permittees to evaluate the effectiveness of control measures. If a non-mining facility obtains four stormwater samples where the average concentration meets the benchmark concentration for a specific parameter, the facility may discontinue monitoring that pollutant for the remainder of the permit term. Where unable to meet benchmarks, the permit provides the ability to stop benchmark monitoring if the exceedances of benchmarks are either due to natural background conditions or by demonstrating that all measures that are technologically and financially achievable have been implemented.

As stated above, the mining industry’s continual earth disturbances at mining sites and the potential for elevated background levels of some pollutants means that appropriate benchmark levels to serve as a reliable measure of the effectiveness of stormwater control measures being implemented at a mine site, have not been determined. The benchmark levels contained in EPA’s 2008 MSGP and ADEQ’s non-mining MSGP 2010 may in fact be lower than natural background in areas where mining activity occurs. Therefore, benchmark monitoring in the mining MSGP 2010 has been replaced by general analytical monitoring and the numeric values of those parameters are placed in a mining guidance document. All other monitoring requirements in the mining MSGP 2010 are the same as those required under the non-mining MSGP 2010.

Inactive and unstaffed sites may exercise a waiver for benchmark or general analytical monitoring. A permittee who discharges a pollutant of concern to an impaired waterbody must monitor twice per wet season for the first year for

that pollutant. Both permits contain requirements for new and existing discharges to impaired waters with or without ADEQ approved TMDLs. New dischargers are only eligible for discharge authorization if they demonstrate (and document) that there is no exposure of stormwater to the pollutant for which the water is impaired, or the pollutant is not present at the facility, or that the discharge is not expected to cause or contribute to a water quality standards exceedance.

The non-mining MSGP 2010 enables dischargers to cease monitoring if benchmark exceedances are documented as attributable solely to natural background levels of that pollutant. The mining MSGP 2010 does not contain this provision because mining permittees are not required to achieve a specific benchmark number that documents a natural background condition. Both permits contain a detailed section on monitoring procedures with follow-up actions if a discharge exceeds a numeric effluent limit.

Part 7 describes the requirements for submitting monitoring data to ADEQ to document stormwater quality and identify potential water quality concerns.

Part 8 describes requirements specific to the particular industry sectors. The non-mining MSGP 2010 is available to facilities with stormwater discharges associated with industrial activity in 25 industry sectors (Sector A through F and Sector K through AC). In addition, the non-mining MSGP 2010 includes a 26th sector (Sector AD), allowing ADEQ to permit additional industrial activities which ADEQ determines require permit coverage for industrial stormwater discharges not included in the other 25 non-mining industrial sectors. The sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes.

Part 8 of the mining MSGP 2010 (Sectors G, H, I and J) contains specific requirements for four mining sectors, although two sectors are reserved (coal (sector H) and oil & gas (sector I)) because these activities occur only in Indian Country in Arizona where ADEQ has no jurisdiction. Furthermore, MSGP related activities in these reserved sectors are unlikely to occur in the future on non-Indian lands.

4. A description of the permit area:

The proposed general permits cover discharges from any of the 29 specified industrial sectors that have stormwater discharges associated with industrial activities in Arizona, except for Indian Country as defined in 18 U.S.C. 1151.

5. How to obtain copies of the draft permit documents:

Copies of the proposed general permits and accompanying fact sheets are available upon request from the agency personnel listed in item 7, below, and on the Department's web site at <http://www.azdeq.gov/environ/water/permits/msgp.html>.

The proposed general permits and fact sheets are also available at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ and may be reviewed any time between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays.

6. The time during which the agency will accept written comments:

Comments on the proposed general permits must be submitted c/o Dennis L. Turner at the address, fax number, or e-mail address provided below, and received or postmarked no later than October 25, 2010. Within the comment period, interested persons may also request a public hearing under A.A.C. R18-9-A908 concerning the proposed permits.

No formal public hearing is currently scheduled. However, if the Department decides to hold a public hearing, the time and place of the public hearing will be announced on the ADEQ web site at <http://www.azdeq.gov/environ/water/permits/msgp.html>. Interested persons may also request notification about the public hearing by subscribing the MSGP listserv at <http://www.azdeq.gov/subscribe.html>. Alternatively, interested persons may request notification about the public hearing by contacting Dennis L. Turner at the e-mail address, postal address, or phone number below.

7. The name, address, and telephone number of agency personnel to whom questions and comments on the general permit may be addressed:

Name:	Dennis L. Turner
Address:	Department of Environmental Quality Water Quality Division, Surface Water Section 1110 W. Washington St., MD5415A-1 Phoenix, AZ 85007
Telephone:	(602) 771-4501
Fax:	(602) 771-4528
E-mail:	turner.dennis@azdeq.gov

Notices of Public Information

NOTICE OF PUBLIC INFORMATION

LAWS 2010, CH. 287

**Revisions to the Rulemaking Process in the Administrative Procedures Act
Extension of the Rulemaking Moratorium Through Fiscal Year 2011**

[M10-191]

1. Reason for the Notice of Public Information:

Laws 2010, Ch. 287 revised the Administrative Procedure Act and extended the moratorium on rulemaking through fiscal year 2011

2. Effective date of Laws 2010, Ch. 287:

July 29, 2010

3. Summary of Laws 2010, Ch. 287:

Revises the rulemaking process by expanding the use of summary rulemaking, authorizing a general permit and expanding the role of the governor's Office of Strategic Planning and Budgeting.

Requires the rule's benefits to outweigh its probable costs and the agency to demonstrate it selected the least burdensome and costly alternative. (Strikes the requirement for this to be by clear and convincing evidence).

Expands the requirements for the Economic, Small Business and Consumer Impact Statement.

For the agency's five-year review, requires a determination that the rule imposes the least burden and cost to the regulated community.

During an appeal of an agency rule, outlines an additional reason for filing an objection.

Extends the rulemaking moratorium on rulemaking through fiscal year 2011

(Excerpted from Arizona House of Representatives House Majority Research Memorandum of April 28, 2010. Available online at www.azleg.gov.)

4. Contact for rulemaking moratorium questions:

Communications regarding exceptions to the moratorium, or questions regarding the moratorium generally, should be addressed to Richard Bark, Deputy Chief of Staff, Policy, at rbark@az.gov.

5. Location of full text of Laws 2010, Ch. 287:

The entire text of Laws 2010, Ch. 287 is available online at www.azsos.gov under Legislative Filings.